

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

---

**BRINK'S GLOBAL SERVICES USA, INC.,**

**Employer,**

**and**

**Case No. 29-RC-260969**

**LAW ENFORCEMENT SECURITY  
OFFICERS UNIONS (LEOSU),  
LAW ENFORCEMENT OFFICERS  
SECURITY AND POLICE BENEVOLENT  
ASSOCIATION (LEOS-PBA),**

**Petitioner**

---

**PETITIONER'S REQUEST FOR REVIEW**

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, Petitioner Law Enforcement Security Officers Unions (LEOSU), Law Enforcement Officers Security and Police Benevolent Association (LEOS-PBA), by its undersigned counsel, files this Request for Review of the Regional Director's Report on Challenges issued on September 22, 2020. This Request is limited to the ballots cast by Sherob Kellam and Katharyne Martina.

A Request for Review is warranted because the Regional Director's decision to conduct a mail ballot election and the instructions the Regional Director issued to the parties and to eligible voters was inconsistent with the purposes of a mail ballot election. The Regional Director's Report ignores the requirement in the Decision and Direction of Election that ballots be postmarked by July 31.

One of the understated purposes of a Stipulated Election Agreement or a Direction of Election is that it specifies the closing of the representation campaign. In a manual election, campaigning ceases the minute the polls open. In a mail ballot election, the campaign ceases on either of three dates: (1) on the last day ballots must be postmarked; (2) on the date ballots must be submitted to the Region; or, (3) if no postmark date or due date is specified, on the day ballots are

counted. Neither the Union nor the Employer has any reason to campaign after the last ballot can be submitted. The Regional Director's Decision on Challenges interfered with the timing of the Petitioner's campaign.

### UNDISPUTED FACTS

On June 25, 2020, the Regional Director issued her Decision and Direction of Election after a hearing in which the only issue was whether to conduct a mail ballot election. After concluding that a mail ballot election was appropriate, the Regional Director established the following ground rules for the conduct of the election:

The election will be held by mail ballot. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 29, on **JULY 10, 2020**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 29 office by close of business on **JULY 31, 2020**<sup>2</sup> The mail ballots will be counted by video conference, on a date and at a time and in a [*sic*] to be determined by the Regional Director after consultation with the parties.

<sup>2</sup>In order to be valid and counted, the returned ballots must be postmarked on or before July 31, 2020 and received in the Region 29 Office prior to the counting of the ballots.

[Attachment 1 hereto (emphasis in the original) at 4].

Unfortunately, the material sent to the eligible voters was inconsistent with the Decision and Direction of Election. The Instructions stated as follows:

**ELECTION DETAILS:** The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate voting unit by the office of the National Labor Relations Board, Region 29, on **Friday, July 10, 2020**. Voters must return their mail ballots so that they will be received by the National Labor Relations Board, Region 29, by close of business on **Friday, July 31, 2020**. Voters must sign the outside of the envelope in which the ballot is returned. **Any ballot received in an envelope that is not signed will be automatically void**

There was no date for the ballot count. [Attachment 1 hereto (emphasis in the original) at 7]. This instruction repeated the return date, but omitted the postmark date. Given public information about

mail delays, this would have required mailing at least several days before July 31, well after the July 31 requirement in the Decision and Direction of Election.

Unfortunately, the material distributed with the sample ballot contained the same omission:

**TO BE COUNTED, YOUR BALLOT MUST REACH THE REGIONAL  
OFFICE  
BY July 31, 2020**

[Attachment 1 hereto (emphasis in the original) at 9].

Apparently, no one noticed the discrepancy between the requirements on the Direction and those on the Instruction. There is no record that anyone asked the Region for consistency .

The Petitioner and the Employer both requested an immediate count. The Region responded that it would not even schedule the count until all ballots were received, presumably on July 31. In response to repeated requests by the Petitioner, the Region explained that the process had been delayed by “bumps at the Post Office.” Despite a request by the Employer, the Region would not describe or explain the “bumps.” On August 19, a Board Agent stated that the ballots were at his house in Brooklyn and suggested August 25 for the count. [Attachment 2 hereto].

On August 25, 2020, the Region counted the ballots. There were 17 votes for the Petitioner, 15 votes against the Petitioner, and five challenged ballots. [Attachment 2]. The Petitioner argued that the Region should reject the ballot cast by Sherob Kellam because the ballot was postmarked after the July 31, 2020 deadline. The Petitioner also argued that the Region should reject the ballot of Katharyne Martina because there was no postmark date on her ballot envelope.

On September 22, 2020, the Regional Director issued the Report on Challenges. With regard to the challenges concerning the ballots of Sherob Kellam and Katharyne Martina, the Regional Director stated as follows:

The Manual clearly states that any ballot received by the Regional office before the count should be counted, “even if they are received after close of business on the return by date.” See *Casehandling Manual, Part Two, Representation Proceedings*, Section 11336.5(c) citing *Kerrville Bus Co.*, 257 NLRB 176, 177 (1981) (“Although the record here does not disclose any reason for [voters’] late mailing of their ballots, the Board has not regarded the absence of an excuse as a factor invariably requiring that a late ballot not be counted. In the instant case, we find most significant the fact that the ballots of both [voters] were received by the Board prior to the counting of ballots.”); *Premier Utility Services, LLC*, 363 NLRB No. 159, slip op. at 1 fn.1 (2016) (“The Board will generally permit mail ballots received after the due date, but before the count, to be opened and tallied.”); *Classic Valet Parking, Inc.*, 363 NLRB No. 23 (2015).

[Attachment 3]

### ARGUMENT

While the Regional Director’s rationale accurately describes Board precedent and procedure where the Direction of Election does not contain a postmark requirement, it completely ignores the express requirement in the Decision and Direction of Election that all ballots be “postmarked on or before July 31, 2020.” The Decision and Direction of Election binds the parties, subject to their right to file a Request for Review. Why does it not equally bind the Regional Director who issued it?

The Board’s decisions on counting late-arriving ballots involve situations in which there was a “due date” but not a postmark deadline. Where, as here, the Region imposed both a postmark deadline and a fixed receipt deadline, there is no reason to allow exceptions to the postmark deadline. Even worse, the Region did not even address why it should ignore the requirement in its own Direction of Election in the absence of Board precedent.

If a Region can ignore this express requirement in its own Direction of Election, several questions must be considered. First, counting late-postmarked ballots discriminates against the 15 eligible voters who did not cast ballots. How many might have voted if they had known that the July

31 deadline was meaningless? No one knew the eventual date of the ballot count. Had Petitioner known that employees could cast and postmark ballots after July 31, it could have continued to solicit additional votes during the 25 days between the deadline and the eventual vote count. As shown in Exhibit 2, the date for the vote count was not set until August 18. There was plenty of time to continue campaigning. Given the closeness of the tally, even one or two additional votes for Petitioner could have been significant.

Second, if some requirements in the Direction of Election can be ignored, why not ignore the requirement that voters sign the outside of the envelope? Three ballots were rejected as void for not having a signature. Why not allow those three voters to testify at a Board hearing that they did cast ballots without signing the envelope?

The Regional Director found that “the ballot of Sherob Kellam on the ground that his ballot was postmarked after July 31, 2020.” Because the ballot was postmarked after July 31, his ballot should not be counted.

The Regional Director found that Katharyne Martina’s ballot had no postmark. Somehow it was received before August 25. But the Region marks ballot envelopes to show when they were received. The date of receipt should allow an estimate of the date of mailing. If the estimated date of mailing was after July 31, her vote should not be counted. More importantly, the Region should enforce the postmark rule and void her ballot. The Region should enforce its requirement without manufacturing excuses for violations.

Finally, it is clear that Post Office “bumps” caused the lengthy delay in counting the ballots, but neither party has been told the facts. If this delay encouraged the Regional Director to ignore the postmark requirement or allowed the counting of ballots which would not have been received

had the ballot count been conducted in the first week of August, as the Employer requested, the late ballots should not be counted. We do not want to set aside the election because of these “bumps,” but we do want to know if they affected the receipt of ballots.

For the reasons stated herein, the Board should grant this Request for Review and establish Board policy for those situations in which the Direction of Election includes a postmark requirement.

Respectfully submitted,

/s/ Jonathan Axelrod

Jonathan G. Axelrod

Beins Axelrod, P.C.

1717 K Street N.W. Suite 1120

Washington, DC 20006

telephone: (202) 328-7222

telecopier: (202) 328-7030

[jaxelrod@beinsaxelrod.com](mailto:jaxelrod@beinsaxelrod.com)

Counsel for the Petitioner

Dated September 28, 2020

### **CERTIFICATE OF SERVICE**

hereby certify that, on this 28<sup>th</sup> day of September 2020, I caused the foregoing Petitioner’s Objection to be electronically filed with the NLRB and have emailed it to the following counsel for the Employer and to the Regional Director:

Mark M. Stubley, Esq.

Eric Stuart, Esq.

Ethan Picone, Esq.

Kathy Drew King, Regional Director

/s/ Jonathan Axelrod